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ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

March 18, 2025

Erie County Legislature
92 Franklin Street – 4th Floor
Buffalo, New York 14202

**RE: Erie County Sewer District No. 8
Proposed Increase and Improvement of Facilities (2024)
Bond Resolution**

Dear Honorable Members:

Enclosed please find a memorandum and Bond Resolution from the Department of Environment and Planning, Division of Sewerage Management, pertaining to an Increase and Improvement of Facilities for Erie County Sewer District No. 8 and the issuance of up to \$5.9 million of bonds.

Should your Honorable Body require further information, I encourage you to contact Joseph Fiegl, PE in the Division of Sewerage Management. Thank you for your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "K. R. Hardwick".

Kevin R. Hardwick, Ph.D.
Erie County Comptroller

cc: Joseph Fiegl – Department of Environment and Planning

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Erie County Sewer District No. 8
Proposed Increase and Improvement of Facilities (2024)
Bond Resolution
Date: March 18, 2025

SUMMARY

The Erie County Legislature is requested to approve the attached bond resolution for the proposed Increase and Improvement of Facilities in Erie County Sewer District (ECSD) No. 8. The Bond Resolution requires a roll call favorable vote of not less than two-thirds of all members of the Legislature.

FISCAL IMPLICATIONS

Approving this resolution will have no effect on Erie County's general fund.

REASONS FOR RECOMMENDATION

Pursuant to County Law, Article 5A, Section 268, an Increase and Improvement of Facilities in ECSD No. 8 requires a Public Hearing on the proposed project. The Erie County Legislature approved a resolution on November 21, 2024, calling for a public hearing. The public hearing was held on December 16, 2024, with no objections or concerns raised. Under separate cover, the County Executive through the Department of Environment and Planning sent to your Honorable Body's consideration an "Approving Resolution" for this Increase and Improvement of Facilities (Comm. 5E-16, 2025 - https://public.destinyhosted.com/eriecdocs/2025/CL/20250313_52/3139%5F25COMM.%5F5E%2D16.pdf). Should the approving resolution be passed by Your Honorable Body, the last step to finalize this action is to approve the enclosed bond resolution.

BACKGROUND INFORMATION

The new bond authorization will provide funding for needed improvements to the East Aurora Water Resource Recovery Facility and collection systems in ECSD No. 8. On October 8, 2024, the ECSD No. 8 Board of Managers approved a map, plan, and report recommending the Increase and Improvement of Facilities. The map, plan, and report more fully describing the proposed work in ECSD No. 8 was filed with the Erie County Legislature pursuant to Legislative Comm. 19E-17 (2024).

CONSEQUENCES OF A NEGATIVE ACTION

The County would not be able to fund the necessary improvements in ECSD No. 8.

STEPS FOLLOWING APPROVAL

ECSD No. 8 will advance the necessary improvements.

RESOLUTION NO. _____, 2025

BOND RESOLUTION DATED _____, 2025

BOND RESOLUTION OF THE LEGISLATURE OF THE COUNTY OF ERIE, NEW YORK (THE "COUNTY"), AUTHORIZING THE INCREASE AND IMPROVEMENT OF THE FACILITIES OF ERIE COUNTY SEWER DISTRICT NO. 8 (THE "PROJECT"), STATING THE TOTAL ESTIMATED MAXIMUM COST OF THE PROJECT TO BE \$8,600,000, AUTHORIZING (A) THE EXPENDITURE OF \$2,700,000 FROM THE SEWER DISTRICT'S RESERVE FUND AND (B) THE ISSUANCE OF UP TO \$5,900,000 OF BONDS OR OTHER OBLIGATIONS OF THE COUNTY (COLLECTIVELY, THE "OBLIGATIONS") TO FINANCE SUCH APPROPRIATION; AND FURTHER AUTHORIZING ANY AMOUNTS RECEIVED FROM THE UNITED STATES OF AMERICA AND/OR THE STATE OF NEW YORK OR ANY OTHER SOURCE FOR THE PROJECT TO BE EXPENDED TOWARDS THE COST OF THE PROJECT AS INDICATED HEREIN, OR TOWARDS THE REDEMPTION OF ANY OF THE OBLIGATIONS ISSUED THEREFOR, OR TO BE BUDGETED AS AN OFFSET TO THE TAXES FOR PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE OBLIGATIONS.

(Introduced _____, 2025)

(Adopted) _____, 2025

WHEREAS, the County Legislature (the "Legislature") of the County of Erie (the "County"), a municipal corporation of the State of New York (the "State") has been in the process of undertaking the increase and improvement of the facilities Erie County Sewer District No. 8 (the "District") (the "Project"); and

WHEREAS, such planning has been undertaken, together with appropriate environmental compliance determination proceedings under the State Environmental Quality Review Act, by the Legislature and/or the County's Department of Environment & Planning (the "Department"), and has included such administrative actions as are necessary or required by the State or any federal agency with respect to assessing the potential environmental impacts of the Project and ensuring the safety and security of persons and property in the County with respect to the Project; and

WHEREAS, the Legislature, in accordance with the recommendations of the Department, has determined: (A) that the Project is in the public interest of the County and should be undertaken, (B) that there should be the expenditure of \$2,700,000 from the sewer district's reserve fund and (C) that there should be issued up to \$5,900,000 of bonds, notes, or other obligations of the County (collectively, the "Obligations"), to finance the estimated maximum cost of the Project; and

WHEREAS, it is now desired to adopt a resolution (in accordance with County Law § 259) authorizing the Project and further describes the plan of financing for the Project;

NOW, THEREFORE, BE IT

RESOLVED, by the Legislature (by the favorable vote of not less than two-thirds of all the members of the Legislature) as follows:

SECTION 1. The County hereby authorizes the Project and states that the Project generally consists of improvements to the East Aurora Water Resource Recovery Facility and collection systems of Erie County Sewer District No. 8; all as more fully described in the report and estimate of cost approved by the Board of Managers of the District on October 8, 2024 and filed with the County Legislature pursuant to Section 268 of the County Law .

SECTION 2. The estimated maximum cost of the Project is \$8,600,000, and the plan of financing for the Project includes a) the expenditure of \$2,700,000 from the sewer district's reserve fund and b) the issuance of up to \$5,900,000 of Obligations to finance such amount and the levy and collection of taxes on all the taxable real property in the County to pay the principal of such Obligations and the interest thereon as the same shall become due and payable. Said principal and interest to be reimbursed to the County by the assessment and levy on the real property in the District, all in accordance with their respective proportionate shares of equalized assessed value in the District. Any amounts received by the County from the United States of America and/or from the State of New York or other sources for the Project are hereby authorized to be expended towards the cost of the Project or the redemption of any Obligations issued therefor, or to be budgeted as an offset to the taxes for payment of the principal of and interest on such Obligations.

SECTION 3. The period of probable usefulness for the class of objects or purposes, for which the \$5,900,000 of Obligations herein authorized are to be issued, within the limitations of subdivision 4 of paragraph (a) of Section §11.00 of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (the "Law"), is forty (40) years.

SECTION 4. The temporary use of available funds of the County, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized and (to the extent that such use has already occurred) is hereby ratified, pursuant to Section 165.10 of the Local Finance Law, for the purpose or purposes described in this resolution. The County intends to finance, and the County Comptroller, as the chief fiscal officer of the County (the "Comptroller") is hereby authorized to advance, such amounts as are necessary to pay the costs of the respective specific objects or purposes, classes of objects or purposes and combinations of objects or purposes described in Section 1 hereof, prior to the issuance of the Obligations, out of any available funds of the County on an interim basis. The County reasonably expects to reimburse any such expenditures (to the extent made after the date hereof or within 60 days prior to the earlier of (A) the date hereof or (B) any earlier expression by the County of its intent to reimburse expenditures for the applicable Project(s) or any earlier iteration thereof) with the proceeds of the Obligations, to the extent consistent with the financing plan for such Project(s) as stated herein. This resolution shall constitute the declaration (or reaffirmation) of the County's "official intent" to reimburse the expenditures authorized in this resolution with the proceeds of the Obligations, as required by United States Treasury Regulations Section 1.150-2.

SECTION 5. Each of the Obligations shall contain the recital of validity prescribed by §52.00 of the Law and the Obligations shall be general obligations of the County, payable as to both principal and interest by general tax upon all the taxable real property within the County without limitation as to rate or amount (subject to certain statutory limitations imposed by Chapter 97 of the 2011 Laws of New York). The faith and credit of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Obligations as the same respectively become due and payable. An annual appropriation

shall be made in each year in the County budget sufficient to pay the principal of and interest on the Obligations becoming due and payable in such year and, to the extent not paid from other sources or charges, there shall annually be levied on all the taxable real property of the County a tax sufficient to pay the principal of and interest on such Obligations.

SECTION 6. Subject to the provisions of this Resolution and of the Law, and pursuant to the provisions of §21.00 relative to the issuance of bonds having substantially level or declining annual debt service, §30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of §§50.00, 56.00 to 60.00, 62.00, 62.10, 63.00, 164.00 and 168.00 of the Law, the powers and duties of the Legislature relative to authorizing the issuance of Obligations in the form of notes, or the renewals thereof, relative to providing for substantially level or declining annual debt service, relative to prescribing the terms, form and contents and as to the procedures for the sale and issuance of the Obligations, and relative to executing any agreements for credit enhancement, are hereby delegated to the Comptroller. Without in any way limiting the scope of the foregoing delegation of powers, the Legislature, to the extent permitted by Section 58.00(f) of the Local Finance Law, is hereby specifically authorized to accept bids for the Obligations that are submitted in electronic format. In the absence or unavailability of the Comptroller, the Deputy County Comptroller is hereby specifically authorized to exercise the powers delegated to the Comptroller in this resolution.

SECTION 7. When this resolution takes effect, the Clerk of the Legislature shall cause the same (or a summary thereof) to be published, together with a notice in substantially the form prescribed by Section 81.00 of the Law, in the *Buffalo Challenger*, *East Aurora Advertiser*, and *Lancaster Bee*, which are newspapers having general circulation in the County and published in the County. The validity of the Obligations may thereafter be contested only if the Obligations are authorized for an object or purpose for which the County is not authorized to expend money, or the provisions of law which should have been complied with at the date of the publication of this resolution (or a summary thereof) are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within 20 days after the date of such publication, or if the Obligations are authorized in violation of the provisions of the Constitution of the State of New York.

SECTION 8. Prior to the issuance of any Obligations, the County (acting through the Department and, to the extent necessary or appropriate, the Legislature) has or will have complied (to the extent not accomplished already) with any applicable provisions prescribed in Article 8 of the Environmental Conservation Law, all regulations promulgated thereunder by the New York State Department of Environmental Conservation, and all applicable federal laws and regulations in connection with the environmental quality review process relating to the Project (collectively, the "Environmental Compliance Proceedings"). In the event that any of such Environmental Compliance Proceedings are not completed, or require amendment or modification subsequent to the date of adoption of this resolution, the Legislature will re-adopt, amend or modify this resolution prior to the issuance of the relevant Obligations, to the extent required and acting upon the advice of counsel. It is hereby determined by the Legislature, on the basis of the Environmental Compliance Proceedings and the findings of the Department, that to the extent that the Environmental Compliance Proceedings may apply to the Project, the Project will not result in a significant adverse impact on the environment.

SECTION 9. The County intends to issue the Obligations to finance a portion of the aggregate cost of the Project. The Comptroller is hereby authorized to covenant, in the name and on behalf of the County and for the benefit of the holders and beneficial owners of the Obligations, that the County will not make any use of the proceeds of the Obligations, or any funds reasonably expected to be used to pay

the principal of or interest on the Obligations or any other funds of the County, and will not make any use of the facilities to be financed with the proceeds of the Obligations that would cause the interest on the Obligations to become subject to federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code") or subject the County to any penalties under Section 148 of the Code, and that the County will not take any action or omit to take any action with respect to the Obligations, the proceeds thereof or any facilities to be financed thereby if such action or omission would cause the interest on the Obligations to become subject to federal income taxation under the Code or subject the County to any penalties under Section 148 of the Code.

SECTION 10. For the benefit of the holders and beneficial owners from time to time of the Obligations, the County agrees, in accordance with and as an obligated person with respect to the Obligations under Rule 15c2-12 promulgated by the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 (the "Rule"), to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the County's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination thereof, the Comptroller is authorized and directed to sign and deliver, in the name and on behalf of the County, the commitment authorized by subsection 6(c) of the Rule (the "Commitment") to be placed on file with the Clerk to the Legislature, which shall constitute the continuing disclosure agreement made by the County for the benefit of holders and beneficial owners of the Obligations in accordance with the Rule, with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County and that are approved by the Comptroller on behalf of the County, all of which shall be conclusively evidenced by the signing of the Commitment or amendments thereto. The agreement formed, collectively, by this paragraph and the Commitment, shall constitute the County's continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the County would be required to incur to perform thereunder. The County Comptroller is further authorized and directed to establish procedures in order to ensure compliance by the County with its various continuing disclosure agreements, including the timely provision of information and notices. Prior to making any filing in accordance with the agreement or providing notice of the occurrence of any material event, the Comptroller shall consult with, as appropriate, the County Attorney and the County's bond counsel, the County's municipal advisor, or another qualified independent special counsel to the County. The Comptroller, acting in the name and on behalf of the County, shall be entitled to rely upon any legal advice provided by the County Attorney or such bond counsel or other special counsel in determining whether a filing should be made.

SECTION 11. The Comptroller is hereby specifically authorized to act, on the advice of bond counsel at the time of the issuance of the Obligations, to designate such Obligations, if applicable, as "qualified tax-exempt obligations" in accordance with Section 265(b)(3) of the Code.

SECTION 12. The Comptroller is further authorized to call in and redeem any outstanding Obligations that were issued pursuant to this bond resolution (at such times and in such amounts and maturities as may be deemed appropriate after consultation with the County officials and the County's municipal advisor), to approval any related notice of redemption, and to take such actions and execute such documents as may be necessary to effectuate any such call(s) for redemption pursuant to Section 53.00 of the Law, with the understanding that no such call(s) for redemption will be made unless such notice of redemption shall have first been filed with the Clerk of the Legislature.

SECTION 13. This bond resolution shall take effect immediately upon approval by the County Executive.

The adoption of the foregoing resolution was moved by Legislator _____ and seconded by Legislator _____, before being duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

ABSENT:

Dated: Buffalo, New York,
_____, 2025

The foregoing bond resolution is hereby approved.

Mark C. Poloncarz
County Executive

_____, 2025.

I, Olivia Owens, HEREBY CERTIFY that the County Executive of Erie County approved a bond resolution of which the foregoing is a certified copy and returned the same for filing in the office of the Erie County Legislature.

_____, 2025.

Olivia Owens
Clerk of the Erie County Legislature

APPROVED AS TO CONTENT:

By _____
Kevin R. Hardwick
Erie County Comptroller

APPROVED AS TO FORM:

By _____
Jeremy Toth
Erie County Attorney

CERTIFICATE

I, Olivia Owens, Clerk of the Erie County Legislature, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the Erie County Legislature duly called and held on _____, 2025, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the County Legislature and is a true, complete and correct copy thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the County on _____, 2025.

Olivia Owens
Clerk of the Erie County Legislature

(NOTICE TO BE ATTACHED TO AND TO BE PUBLISHED
WITH COPY OF RESOLUTION AFTER ADOPTION)

NOTICE

The bond resolution, a copy of which is published herewith, has been adopted by the Erie County Legislature on _____, 2025, and the validity of the obligations authorized by such bond resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the County of Erie, New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the constitution of New York.

Olivia Owens
Clerk of the County Legislature